

STATE OF MICHIGAN
COURT OF APPEALS

CITIZENS INSURANCE COMPANY OF
AMERICA, Subrogor¹ of BARBARA HALFORD,

UNPUBLISHED
November 29, 2005

Plaintiff-Appellee,

v

MICHIGAN STATE POLICE,

No. 263761
Court of Claims
LC No. 05-000053-MD

Defendant-Appellant.

Before: Murphy, P.J., and Sawyer and Meter, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's denial of its motion for summary disposition. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

State Police Trooper William Robert Huey was pursuing a fleeing vehicle on Parkbelt Street in Flint. The fleeing vehicle drove onto Barbara Halford's lawn and struck her garage, causing extensive damage to the structure. Plaintiff, Halford's insurer, paid Halford \$22,309.23 for the cost of repairs.

Plaintiff, as Halford's subrogee, filed suit against Huey² and the Michigan State Police, alleging that the damage to the garage was caused by Huey's negligent operation of the patrol vehicle and that Huey operated the vehicle without the insurance coverage required by the no-fault act. See MCL 500.3101. Plaintiff sought recovery of the benefits paid to Halford. Defendant moved for summary disposition under MCR 2.116(C)(8), arguing that it was immune from liability because an officer's handling of a patrol vehicle during a chase is not negligent if the patrol vehicle does not make contact with the fleeing vehicle, cause another vehicle to hit the fleeing vehicle, or force the fleeing vehicle off the road. See *Robinson v Detroit*, 462 Mich 439,

¹ Citizens Insurance Company is designated in the pleadings and the order appealed from as its insured's subrogor. However, it seems apparent that Citizens would be its insured's subrogee. See *Black's Law Dictionary*, Seventh Edition, p 1441.

² Subsequently, the parties stipulated to the dismissal of Huey from the action.

456, 462; 613 NW2d 307 (2000). Plaintiff responded that governmental immunity was not at issue and that because the police vehicle was involved in the accident, see *Turner v Auto Club Ins Ass'n*, 448 Mich 22, 39; 528 NW2d 681 (1995), defendant was liable for its share of the property protection benefits paid to Halford. The trial court agreed with plaintiff and denied defendant's motion for summary disposition.

We review de novo a trial court's decision with regard to a motion for summary disposition. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

A governmental agency is liable for bodily injury and property damage caused by the negligent operation of a government-owned vehicle by a governmental employee. MCL 691.1405. The injury or property damage must result from the negligent operation of the vehicle. See *Robinson, supra* at 456. A police officer's decision to pursue another vehicle does not constitute negligent operation of a vehicle. See *id.* at 457-458.

To be "involved in the accident" for the purpose of no-fault insurance property protection priority of coverage, a vehicle must be being used as a motor vehicle and must actively contribute to the accident. *Auto Club Ins Ass'n v State Auto Mutual Ins Co*, 258 Mich App 328, 337; 671 NW2d 132 (2003). A mere "but for" connection between the motor vehicle and the damage is not sufficient, but neither physical contact nor fault is required. *Id.*

We reverse. Contrary to plaintiff's assertion, the complaint sounded in tort. Plaintiff alleged that defendant's agent, Trooper Huey, negligently operated a patrol vehicle and that, as a result, Halford's property was damaged. This is the type of claim that is precluded by governmental immunity. See *Robinson, supra* at 456-458. Plaintiff correctly notes that there is no exception to insurer liability based on the fact that the insured's vehicle is a police vehicle. *Turner, supra* at 42-43. However, plaintiff did not seek to recover a proportionate share of benefits paid to Halford from defendant's insurer.³ Rather, plaintiff alleged negligence on the part of defendant's agent and incorrectly sought to recover from defendant under MCL 500.3177 as if defendant had been uninsured.⁴ Plaintiff's claim, as stated, was legally insufficient. MCR 2.116(C)(8). Defendant was entitled to summary disposition.

³ We note that in *Turner, supra* at 25-26, a Ferndale police vehicle was involved in a multi-vehicle accident. The plaintiff sought to recover benefits from the insurers of the various vehicles involved in the accident, and the City was directly named in the action because it was self-insured. See *id.* at 26.

⁴ "An insurer obligated to pay . . . benefits for accidental bodily injury to a person arising out of the ownership, maintenance, or use of an uninsured motor vehicle as a motor vehicle may recover" the benefits paid from the owner or registrant of the uninsured motor vehicle. MCL 500.3177(1). Defendant's patrol vehicle was not an uninsured vehicle.

Reversed and remanded for entry of judgment in favor of defendant. We do not retain jurisdiction.

/s/ William B. Murphy

/s/ David H. Sawyer

/s/ Patrick M. Meter